

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STERLING ATKINS,

Petitioner,

vs.

RENEE BAKER, *et al.*,

Respondents.

2:02-cv-01348-JCM-PAL

ORDER

In this capital habeas corpus action, brought by Nevada prisoner Sterling Atkins, in a sealed order entered June 30, 2015, (ECF No. 160), the court ordered Atkins' counsel discharged from their representation of Atkins. On July 28, 2015, A. Richard Ellis was appointed to represent Atkins (ECF No. 162). On August 5, 2015, Ellis accepted the appointment (ECF No. 165). Therefore, the court will now set a schedule for further proceedings in this action.

IT IS THEREFORE ORDERED that the following schedule shall govern the further litigation of this action:

1. **Amended Petition.** If necessary, petitioner shall file and serve a fourth amended petition for writ of habeas corpus within **180 days** after entry of this order. The fourth amended petition shall specifically state whether each ground for relief has been exhausted in state court; for each claim that has been exhausted in state court, the fourth amended petition shall state how, when,

1 and where that occurred. If petitioner determines that a fourth amended petition need not be filed,
2 then within 180 days after entry of this order, petitioner shall file and serve a statement to that effect.

3 2. **Response to Petition.** Respondents shall have **60 days** following service of the
4 fourth amended petition to file and serve an answer or other response to the fourth amended petition.
5 If petitioner does not file a fourth amended petition, respondents shall have **60 days** following the
6 due-date for the fourth amended petition to file and serve an answer or other response to petitioner's
7 third amended petition.

8 3. **Reply and Response to Reply.** Petitioner shall have **45 days** following service of
9 an answer to file and serve a reply. Respondents shall thereafter have **30 days** following service of a
10 reply to file and serve a response to the reply.

11 4. **Briefing of Motion to Dismiss.** If respondents file a motion to dismiss, petitioner
12 shall have **60 days** following service of the motion to file and serve a response to the motion.
13 Respondents shall thereafter have **30 days** following service of the response to file and serve a reply.

14 5. **Discovery.** If petitioner wishes to move for leave to conduct discovery, petitioner
15 shall file and serve such motion concurrently with, but separate from, the response to respondents'
16 motion to dismiss or the reply to respondents' answer. Any motion for leave to conduct discovery
17 filed by petitioner before that time may be considered premature, and may be denied, without
18 prejudice, on that basis. Respondents shall file and serve a response to any such motion concurrently
19 with, but separate from, their reply in support of their motion to dismiss or their response to
20 petitioner's reply. Thereafter, petitioner shall have 20 days to file and serve a reply in support of the
21 motion for leave to conduct discovery.

22 6. **Evidentiary Hearing.** If petitioner wishes to request an evidentiary hearing,
23 petitioner shall file and serve a motion for an evidentiary hearing concurrently with, but separate
24 from, the response to respondents' motion to dismiss or the reply to respondents' answer. Any
25 motion for an evidentiary hearing filed by petitioner before that time may be considered premature,
26 and may be denied, without prejudice, on that basis. The motion for an evidentiary hearing must

1 specifically address why an evidentiary hearing is required, and must meet the requirements of
2 28 U.S.C. § 2254(e). The motion must state whether an evidentiary hearing was held in state court,
3 and, if so, state where the transcript is located in the record. If petitioner files a motion for an
4 evidentiary hearing, respondents shall file and serve a response to that motion concurrently with, but
5 separate from, their reply in support of their motion to dismiss or their response to petitioner's reply.
6 Thereafter, petitioner shall have 20 days to file and serve a reply in support of the motion for an
7 evidentiary hearing.

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10 Dated August 10, 2015.

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13 UNITED STATES DISTRICT JUDGE
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